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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS CARDENAS-GARCIA,

Defendant.

No. **CR 08-0333 PJH**

**UNITED STATES' SENTENCING
MEMORANDUM**

Defendant Carlos Cardenas-Garcia entered a guilty plea on June 25, 2008, in which he admitted to one count of illegal reentry into the United States following deportation, in violation of 8 U.S.C. § 1326. In that agreement, the parties agreed that the total adjusted offense level is 13. The government agrees with the Probation Officer's ("PO") analysis in the Modified Presentence Report ("PSR") of Defendant's criminal history, which shows the Defendant to be a Criminal History Category IV. The government submits this brief Sentencing Memorandum in light of the issue raised by defense counsel regarding the computation of the criminal history score at the last hearing of this case. For the reasons stated herein, the government agrees with

SENTENCING MEMORANDUM
CR 08-0333 PJH

1 the PO's analysis.

2 According to defense counsel, the defendant should not have received extra points in his
3 criminal history score due to the fact that he committed the instant offense while under a criminal
4 justice sentence imposed on January 18, 2008, in case number 2341871. PSR ¶ 10. Contrary to
5 that argument, the indictment alleges, and the defendant agreed, that he was "found in" the
6 United States on May 5, 2008. Thus, the defendant did indeed commit the current offense while
7 under a criminal justice sentence and less than two years following release from imprisonment in
8 case number 2341871.

9 The defendant appears to be claiming that this Court should use the date that the ICE
10 detainer was initially placed on the defendant (November 9, 2007), rather than the date alleged in
11 the indictment, for assessing the defendant's criminal history score. The Eleventh Circuit has
12 addressed this issue in *United States v. Coeur*, 196 F.3d 1344 (11th Cir. 1999), and rejected the
13 defendant's argument:

14 Coeur's argument that his re-entry offense was committed when he
15 first re-entered the United States ignores the specifics of the charge
16 to which he pled guilty. We have held that when a defendant
17 enters a plea of guilty to being 'found in' the United States on a
certain date, the issue of when the offense was committed is
settled, and the defendant may not later dispute that date.

18 *Id.* at 1346 (citations omitted). The *Coeur* court went on to hold that it was appropriate to assess
19 two criminal history points under U.S.S.G. § 4A1.1(d) where the date the defendant admitted to
20 being "found in" the United States was a date on which he was imprisoned for another offense.
21 *Id.* (relying on *United States v. Santana-Castellano*, 74 F.3d 593 (11th Cir. 1996)).

22 In addition, even if this Court were to use a "found in" date of November 9, 2007, when
23 an Immigration & Customs Enforcement hold was initially placed on the defendant, the same
24 analysis applies. The defendant was found in the San Francisco County Jail after being arrested
25 for selling or furnishing marijuana or hashish. Although he was not convicted and sentenced
26 until January 10, 2008, the time that the defendant spent in jail up until that point was part of his
27 "criminal justice sentence" for that offense. Although the defendant would not then receive a
28 third point for committing the instant offense within two years of release, it does not matter

1 because he is still in Criminal History Category IV.

2
3 DATED: August 20, 2008

Respectfully submitted,

4 JOSEPH P. RUSSONIELLO
5 United States Attorney

6
7 /s/
8 ERIKA R. FRICK
9 Assistant United States Attorney
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